

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARETHA BRAZIEL, et al.,

Plaintiffs,

v.

GRETCHEN WHITMER, et al.,

Defendants.

Case No. 1:21-cv-960

Hon. Hala Y. Jarbou

ORDER

In accordance with the opinion entered this date:

IT IS ORDERED that the report and recommendation (“R&R”) of the magistrate judge (ECF No. 173) is **ADOPTED IN PART** and **REJECTED IN PART** as the opinion of the Court. The R&R is **REJECTED** insofar as it concludes (1) that Plaintiffs fail to state a federal claim against Defendants Muhammad, O’Malley, and the City of Benton Harbor; and (2) that the Court should decline to exercise supplemental jurisdiction over Plaintiffs’ state-law claims because the Court will dismiss all of Plaintiffs’ federal claims. Instead, the Court concludes that Plaintiffs state a substantive due process claim against Defendants Muhammad, O’Malley, and the City of Benton Harbor. The Court will decline to exercise supplemental jurisdiction for different reasons.

IT IS FURTHER ORDERED that the Rule 12(b)(1) motion to dismiss by Defendants Clark, Gordon, Hertel, Oswald, and Whitmer (collectively, the “State Defendants”) (ECF No. 141) is **DENIED**.

IT IS FURTHER ORDERED that the Rule 12(b)(6) motion to dismiss by the State Defendants (ECF No. 145) is **GRANTED**. Accordingly, Defendants Clark, Gordon, Hertel, Oswald, and Whitmer are **DISMISSED** for failure to state a claim.

IT IS FURTHER ORDERED that the Rule 12(b)(1) motion to dismiss by Defendants Muhammad, O'Malley, Watson, Mitchell, and the City of Benton Harbor (collectively, the "City Defendants") (ECF No. 147) is **DENIED**.

IT IS FURTHER ORDERED that the Rule 12(b)(6) motion to dismiss by the City Defendants (ECF No. 150) is **GRANTED IN PART** and **DENIED IN PART** as set forth in the opinion. Accordingly, Defendants Watson and Mitchell are **DISMISSED** for failure to state a claim.

IT IS FURTHER ORDERED that the motion to dismiss by Defendant Elhorn Engineering Company (ECF No. 139) is **GRANTED** insofar as it asks the Court to decline to exercise supplemental jurisdiction over Plaintiffs' state law claims.

IT IS FURTHER ORDERED that Plaintiffs' claims arising under state law are **DISMISSED WITHOUT PREJUDICE** because the Court declines to exercise supplemental jurisdiction over them. Accordingly, Defendants Elhorn Engineering Company and F&V Operations and Resource Management, Inc. are **DISMISSED**.

In light of the foregoing, the only claims remaining are: (1) the substantive due process claim in Count I against Defendants Muhammad and O'Malley; and (2) the *Monell* claim in Count II against the City of Benton Harbor. All other claims and Defendants have been dismissed.

Dated: September 28, 2023

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE